

Application Serial No.: 09/527,028  
Atty. Docket No. 22321-00001-US

### **REMARKS**

#### **Status of Claims:**

Claims 12 and 14-24 were pending in the application; claim 18 is hereby cancelled without prejudice or disclaimer of subject matter contained within. Claims 12, 14-17 and 19-24 are now pending. Each of the pending claims defines an invention that is novel and unobvious over the cited art. Favorable consideration of this case is respectfully requested.

#### **Allowable Subject Matter:**

Claims 18, 19, and 24 were objected to as depending from a rejected base claim, but would be allowable if re-written in independent form including all of the recitations of the base claim (claim 12) and any intervening claims.

#### **Rejection Under 35 U.S.C. § 102(b):**

Claims 12, 14-17, and 20-23 were rejected under 35 U.S.C. § 102(b) as being anticipated by Sakata (5,538,893).

Rejection under 35 U.S.C. § 102 requires the prior art disclose each and every recitation of the claimed invention.<sup>1</sup> In determining anticipation, no claim recitation may be ignored.<sup>2</sup> Anticipation requires the disclosure, in a prior art reference, of each and every recitation as set forth in the claims.<sup>3</sup> There must be no difference between the claimed invention and reference disclosure for an anticipation rejection under 35 U.S.C. § 102.<sup>4</sup>

The Examiner has acknowledged that the recitations of Claim 18 render it allowable over Sakata. The Applicants hereby amend Claim 12 to incorporate the recitations of Claim 18, thereby rendering allowable Claim 12 and each claim dependent therefrom. In view of the instant Amendment, the Applicants respectfully submit that Claims 12, 14-17, and 19-24 are allowable.

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<sup>1</sup> See MPEP § 706.02.

<sup>2</sup> See *Pac-Tex, Inc. v. Amerace Corp.*, 14 USPQ2d 1871 (Fed. Cir. 1990).

<sup>3</sup> See *Titanium Metals Corp. v. Banner*, 227 USPQ 773 (Fed. Cir. 1985); *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 1 USPQ2d 1081 (Fed. Cir. 1986); and *Akzo N.V. v. U.S. International Trade Commissioner*, 1 USPQ2d 1241 (Fed. Cir. 1986).

<sup>4</sup> See *Scripps Clinic and Research Foundation v. Genentech, Inc.*, 18 USPQ2d 1001 (CAFC 1991) and *Studiengesellschaft Kohle GmbH v. Dart Industries*, 220 USPQ 841 (CAFC 1984).

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**Conclusion:**

In view of the above, consideration and allowance are respectfully solicited.

Accordingly, it is respectfully requested that the foregoing amendments be entered; that the application as so amended receive an examination on the merits, and that the claims as now presented receive an early allowance.

In the event the Examiner believes an interview might serve to advance the prosecution of this application in any way, the undersigned attorney is available at the telephone number noted below.

The Commissioner is hereby authorized to charge any fees or credit any overpayment associated with this communication, including any extension fees or fees for the net addition of claims, to Deposit Account No. 22-0185.

Respectfully submitted,



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